

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 MARIA VELEZ,

4 Plaintiff,

5 v.

CIVIL NO. 05-2108 (RLA)

6 MARRIOTT PR MANAGEMENT, INC.,
7 et al.,

8 Defendants.

9 **ORDER DISMISSING RETALIATION CLAIM**
10 **ASSERTED UNDER LAW 69**

11 Defendants have moved the court to extend its ruling¹ dismissing
12 the retaliation claim asserted by plaintiff under Title VII of the
13 Civil Rights Act, 42 U.S.C. § 2000e-3 to her retaliation claim
14 brought pursuant to Act No. 69 of July 6, 1985, Laws of P.R. Ann.
tit. 29, §§ 1321 *et seq.* (2002).

15 Plaintiff contends that dismissal as requested is not proper in
16 that the burden of proof applicable under Law 69 is not the same as
17 that used in Title VII suits. Rather, plaintiff argues that in
18 proving her local retaliation cause of action she is entitled to the
19 evidentiary presumption applicable to discrimination cases filed
20 under Puerto Rico Act No. 100 of June 30, 1959, P.R. Laws Ann. tit.
21 29, §§ 146 *et seq.* (2002) and that defendants failed to adequately
22 challenge the presumption of discriminatory retaliation in their
23 motion for summary judgment.

24
25 ¹ See Order in the Matter of Defendants' Motion for Summary
26 Judgment (docket No. 137).

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3 Under Law 100, once a plaintiff establishes a *prima facie* case
4 of discrimination by showing that she was subjected to some adverse
5 employment action for discriminatory reasons "the burden shifts to
6 the employer to prove by a preponderance of the evidence that it had
7 'just cause' for its actions. If the employer establishes just cause,
8 the burden of proof returns to the plaintiff. If the employer fails
9 to prove just cause, however, it bears the burden of proving by a
10 preponderance of the evidence that the decision was not motivated by
11 [sex] discrimination." Baralt v. Nationwide Mut. Ins. Co., 251 F.3d
12 10, 16 (1st Cir. 2001) (internal citations omitted). "[I]n order to
13 rebut the Law 100 presumption, the employer must prove, by a
14 preponderance of the evidence, that the challenged action was not
15 motivated by discriminatory... animus." Ramos v. Davis & Geck, Inc.,
16 167 F.3d 727, 734 (1st Cir. 1999) (citation and internal quotation
17 marks omitted). If the employer proves that its decision was
18 justified the presumption disappears and "the burden of proof on the
19 ultimate issue of discrimination remains with the plaintiff".
20 Alvarez-Fonseca v. Pepsi Cola de Puerto Rico Bottling Co., 152 F.3d
21 17, 28 (1st Cir. 1998).

22 Upon review of our previous Order we find that regardless of the
23 evidentiary standard applicable to the retaliatory claim asserted
24 under Law 69 we can safely conclude that summary judgment is also
25 warranted regarding plaintiff's local retaliation cause of action. In
26 making this finding it is important to note that defendants'

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3 proffered explanations for the underlying challenged events regarding
 4 the alleged retaliatory hostile environment were uncontested by
 5 plaintiff during the summary judgment process.² Hence, based on the
 6 evidence submitted, we find that defendants carried their burden of
 7 dissipating the presumption of discrimination even under the more
 stringent local evidentiary standard.

8 Based on the foregoing, defendants' Urgent Motion in Limine
 9 (docket No. **149**), taken as a motion for reconsideration,³ is **GRANTED**.⁴
 10 Accordingly, plaintiff's Law 69 retaliation claim is **DISMISSED** based
 11 on the reasoning set forth in our previous Order in the Matter of
 12 Defendants' Motion for Summary Judgment (docket No. 137).

13 Judgment shall be entered accordingly.

14 IT IS SO ORDERED.

15 In San Juan, Puerto Rico, this 24th day of February, 2009.

16 _____
 17 S/Raymond L. Acosta
 RAYMOND L. ACOSTA
 United States District Judge

18 _____
 19 ² See Order in the Matter of Defendants' Motion for Summary
 Judgment (docket No. 137) p. 59. See also, Order in the Matter of
 20 Motion to Deem as Uncontested Defendant's Statement of Uncontested
 Facts (docket No. 139) and Order Enjoining Plaintiff from Introducing
 Evidence Regarding Alleged Retaliatory Incidents after November 20,
 21 2006 (docket No. 123).

22 ³ Plaintiff's timeliness argument is likewise rejected.
 23 "Interlocutory orders [including summary judgment denials]... remain
 open to trial court reconsideration until the entry of [final]
 judgment." Nieves-Luciano v. Hernandez-Torres, 397 F.3d 1, 4 (1st Cir.
 24 2005).

25 ⁴ See Plaintiff's Opposition (docket No. **160**) and Defendants'
 26 Motion in Compliance with Court Order Regarding Burden of Proof for
 Retaliation Claims under Law 69 (docket No. **159**).